IN THE

United States Supreme Court.

PETITION FOR CERTIORARI.

RIVERDALE COTTON MILLS,
Petitioners,

vs.

ALABAMA & GEORGIA MFG. CO.,
Respondents.

REPLY OF RESPONDENTS, CALLING ATTENTION TO MIS-STATEMENT IN PETITION OF THE ISSUES.

MARION ERWIN,
Solicitor for Respondents.

JOHN T. MORGAN,
Of Counsel.

APPEAL PRINTING CO., 14 Vesey St. TEL. 102 CORTLANDT.

IN THE

Supreme Court of the United States

RIVERDALE COTTON MILLS, Petitioner, vs. ALABAMA & GEORGIA MFG. CO., Respondents.	Petition for Certiorari.

Reply of Respondent to Petition.

Having been served with a copy of the foregoing petition, and notified that the petition would be presented to the Supreme Court on March 14, 1904, these respondents, The Alabama & Georgia Manufacturing Company, and the Huguley Manufacturing Company, both corporations created by and organized under the laws of the State of Alabama, respectfully submit to the Court, by way of response thereto:—

That the statement of the case, in said petition of the Riverdale Cotton Mills, is so absolutely at variance with the truth of the case, and the real issues which were presented by the record for the decision of the Circuit Court of Appeals, that it appears to these respondents, that it would be an imposition on the Supreme Court not to call attention thereto *in limine*.

The Hearing was on Bill and Answer.

The decree of September 29th, 1902, rendered by the Circuit Court of the United States for the Northern District of Georgia,. which was reversed by the Circuit Court of Appeals, and which reversal is the subject of complaint on the present petition for certiorari, was rendered on a hearing on *bill and answer*, with no evidence introduced on the part of the Riverdale Cotton Mills, the complainant in the so-called ancillary bill to sustain its allegations, or to overcome the denials of fact made in the answers of the Alabama corporations, which, if true, not only took all the equities out of the so-called ancillary bill, but left the Georgia Court without any jurisdiction to enjoin the suit brought by the Alabama corporations in the State Court of Alabama.

"The rule is, that if no replication be filed the answer will be taken as true, and no evidence can be given by the complainant to contradict anything which is therein well alleged."

> Brown vs. Pierce, 7 Wall, 212.
> Reynolds vs. Crawfordville Bank, 112 U. S., 409.

Even where there are allegations in the bill material to the complainant's right to the relief sought, the rule is:

"If the answer neither admits nor denies the allegations of the bill, they must be proved upon the final hearing."

> Young vs. Grundy, 6 Cranch., 51.
> Brown vs. Pierce, 7 Wall, 211.
> Commonwealth, &c., vs. Cummings, 83 F. R , 767.

The case as stated in the petition for certiorari is the case as made by the allegations of the so-

called ancillary bill of the Riverdale Cotton Mills, and totally ignores that all the material allegations of the same were not only wholly overcome by the denials thereof in the answers of the respondents, but that the complainant introduced no evidence whatever to support the allegations of the bill. This would have precluded the complainant's right to the relief even if replication had been filed, instead of the hearing having been on bill and answer.

Statement of the case as made on the record before the Court of Appeals.

There are four corporations, on the identity and mutual relations of which the case turned:

(*a*) "The Alabama & Georgia Manufacturing Company" under which name certain individuals were incorporated by the act of the Legislature of Alabama of February 7, 1866, with principal office in Chambers County, Alabama, and authorized to erect and conduct certain cotton mills on the Alabama side of the Chattahouchee River (Record C. C. A., Part IV, pp. 32, 33 and 42).

(*b*) "The Alabama & Georgia Manufacturing Company," under which name certain individuals were incorporated by act of the Legislature of Georgia of March 21, 1866, with principal offices at Columbus and La Grange, Georgia, and authorized to erect and conduct certain cotton mills on the Georgia side of the Chattahoochee River (Record C. C. A., pp. 653–660).

(*c*) "The Huguley Manufacturing Company" under which name certain individuals were incorporated February 27, 1890, under general laws of the State of Alabama with principal office in

Chambers County, Alabama, a copy of which charter is in the pleadings (Record C. C. A., pp. 656–660).

(*d*) "The Huguley Manufacturing Company" under which name certain individuals were incorporated under general laws of the State of Georgia, with principal office at West Point, Georgia.

A copy of the last mentioned charter is not in the record. But the fact of the incorporation of a company in that name in Georgia, is charged in the original bill filed by J. J. Robinson, Trustee against it in the Circut Court of the United States for the Northern District of Georgia, and is admitted in the answer of said company to said bill. The fact is also admitted in the petition for Certiorari (Clause *First*, p. 2).

Oh January 21st, 1891, J. J. Robinson, a citizen and resident of the State of Alabama, as trustee for mortgage bondholders, brought suit in the Circuit Court of the United States for the Northern District of Georgia, against the Alabama and Georgia Manufacturing Company (the Georgia corporation), and against the Huguley Manufacturing Company (the Georgia corporation), to foreclose a mortgage alleged to have been given by the Alabama & Georgia Manufacturing Company (the Georgia corporation), on certain cotton mills situate in Chambers County, Alabama, and on certain Islands in the Chattahoochee. The said Huguley Manufacturing Company (the Georgia corporation) was made party defendant as assignee of the equity of redemption.

The said Georgia corporations answered admitting their incorporation and citizenship in Georgia, and defended the suit.

It is affirmatively shown in the record that J. J. Robinson, the trustee and complainant in said bill, knew at the time he filed the bill, of the existence of the "Huguley Manufacturing Company," the

Alabama corporation. His certificate to that charter under date of February 28, 1890, is in the record (Part IV, pp. 57-61). He was on constructive notice also of the charter of the "Alabama & Georgia Manufacturing Company," the Alabama corporation of that name, by Act of the Legislature of Alabama of Feb. 7, 1866. Robinson could not bring the foreclosure suit against the Alabama corporations in the Federal Court of Alabama, because they had the same citizenship as he had. He could not make them parties defendant to the bill he filed in the Federal Court in Georgia, for the same reason. He elected to bring suit in the Federal Court in Georgia, against the Georgia corporation solely, to foreclose on cotton mills situate in Chambers County, Alabama. The Alabama corporations were not made, nor were they parties to the Robinson bill in the Federal Court in Georgia.

The Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company (the Georgia corporations) defendants to the Georgia bill, contested the case and finally lost it. The said Federal Court for the Northern District of Georgia (Part III, p. 13), on March 10th, 1896, decreed that the said property including the Mills situate in Alabama, should after being advertised in Georgia alone be exposed for sale at Hamilton, Harris County, Georgia, on May 6th, 1896, by master commissioners.

The charter of the Alabama & Georgia Manufacturing Company (the Georgia corporation), which was granted by act of General Assembly of Georgia, of March 21, 1896, expired by statutory limitation in 30 years from its date, to wit.: on March 21, 1896, and the corporation then died (Act of January 1, 1863; Code of 1895, Sec. 1851. Logan vs. R. R., 87 Georgia Rep., 533; West

End R. R. vs. Atlanta, &c., R. R., 49 Georgia, 151; Central R. R. vs. State, 54 Ga., 404). Notwithstanding this, without making new parties, the sale was made on May 6, 1896, as provided in the decree of March 10, 1896, and a decree of confirmation was made June 25, 1896 (Part III, p. 24). The decree of the Circuit Court of the Northern District of Georgia, directed the Master Commissioners whenever the purchaser should comply with the terms of sale, to convey to the purchaser the property sold including the Mills in Alabama, but did not direct any conveyance by the trustee, nor by the mortgagor, nor by anyone else. The Riverdale Cotton Mills went into possession of the Alabama property under color of this decree and sale made in Georgia, and claims that it complied with the terms of purchase, and obtained a deed from the Master Commissioners of the Federal Court in Georgia to said property, though neither of said claims so set up in its ancillary bill is established by any evidence.

On May 2, 1901, The Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company (the Alabama Corporations) filed their bill in the First District of the Northeastern Chancery Division of the State of Alabama, against the Riverdale Cotton Mills and others, for redemption of the property in Alabama, alleging that the title and equitable right to the property are in them and had been long prior to the Georgia suit. That they were not parties nor privies to the Georgia suit and were not bound by it. They attached as exhibits to their bill copies of their charters under the laws of Alabama, and averred that these were the sole charters of said Alabama Corporations (that they had not been domesticated in Georgia by the laws of that state) They admitted that under similar names to theirs cer-

tain individuals had been incorporated under Georgia laws, but denied that the Georgia corporations were in fact or in law identical with them.

They set up the fact of the organization of their companies under their charters in Alabama, and that they had erected their mill plants in Alabama, and had done business there until their possession was ousted by the illegal proceedings in the Georgia Court.

They set up the fact that the entire property in controversy was situate in Alabama, except perhaps one Island in the Chattahoochee River, used only for agricultural purposes.

The Riverdale Cotton Mills and other defendants appeared and answered the suit in the State Court of Alabama, but while the case was pending for hearing, abandoned that forum.

On June 10, 1891, The Riverdale Cotton Mills, claiming as purchaser under the Georgia, master commissioners' sale in the Robinson suit, filed in the Circuit Court of the United States for the Northern District of Georgia, its so-called ancillary bill, against the plaintiffs in the Alabama suit, and their attorneys to perpetually enjoin them from prosecuting the same, and by temporary injunction tied up the said proceedings.

The said ancillary bill, attacked all the allegations of the Alabama bill, charged that the plaintiffs there were never organized under the laws of Alabama, and that they were in fact and in law the same corporations, as the Georgia corporations who were parties to the Robinson bill, and were bound by the decrees in that case.

The Alabama corporations filed their answer to the so-called ancillary bill, denying that they were in law or in fact the same corporations as the corporations of similar name in Georgia, and denying that they were parties to the Georgia suit or bound by the decrees therein.

They denied that the bill was in fact ancillary to the Robinson suit or that the court could maintain jurisdiction over them by reason thereof. They denied jurisdiction of the court in Georgia to foreclose a mortgage on property in Alabama, or to render a sale, made under decree in Georgia, effective by a master-commissioners deed. They denied the jurisdiction of the Georgia Court over them as Alabama corporations being subject to suit in their home district only, and they denied the power of the Georgia Court to enjoin the suit in the State Court of Alabama.

The case was heard on bill and answer with no evidence offered by either side, the court however recited in its decree that its decree was based on the proceedings in the Robinson suit and the proceedings in the suit on the so-called ancillary bill. By the decree rendered September 29, 1902, the Alabama corporations were perpetually enjoined from proceeding with their suit for redemption in the State Court of Alabama, or otherwise. From this decree the Alabama corporations appealed to the Circuit Court of Appeals for the Fifth Circuit.

Decree of Circuit Court of Appeals.

The Circuit Court of Appeals did not find it necessary to pass upon but one single point out of many in reversing the Court below, and that was upon the absolute want of fundamental jurisdiction of the Circuit Court of the United States at the suit of a citizen of Alabama, plaintiff, to decree against the property rights of corporations of Alabama not made parties to the suit, and which if made parties defendant would have ousted the jurisdiction of the Court.

In reaching this conclusion the court pointed out that although the same individuals may have been incorporated under the same name in two

different states, the charters were taken out independently without reference to each other. That there was no power of merger given in either, and that the corporations of each state were separate entities.

In so deciding the Circuit Court of Appeals set no new precedent but followed a well established line of decisions of this court.

This is the principle laid down in Ohio & Miss. R. R. Co. *v.* Wheeler, 1 Black, 286, and has been repeatedly affirmed. In that case the court said:

"It is true, that a corporation by the name and style of the plaintiffs appears to have been chartered by the States of Indiana and Ohio, clothed with the same capacities and powers and intended to accomplish the same objects, and it is spoken of in the laws of the States as one corporate body, exercising the same powers and fulfilling the same duties in both states. Yet it has no legal existence in either State, except by the law of the State. And neither State could confer on it a corporate existence in the other, nor add to or diminish the powers to be there exercised. It may indeed be composed of, and represent, under the corporate name, the same natural persons. But the legal entity or person, which exist by force of law, can have no existence beyond the limits of the State or sovereignity which brings it into life and endues it with its faculties and powers. The president and directors of the Ohio & Mississippi Railroad Company is, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio, and they cannot be joined in a suit as one and the same plaintiff, nor maintain a suit as one and the same plaintiff, nor maintain a suit in that character

against a citizen of Ohio or Indiana in a Circuit Court of the United States."

Ohio & Miss. R. R. Co. *v.* Wheeler, 1 Black, 286-298.

Quoted and approved in

St. Joseph & Grand Island R. R. *v.* Steele, 167 U. S., 163.

"The rights and liabilities of a State corporation, which has been incorporated in several states, as a corporation of states other than that which created it, cannot be adjudicated in a suit in a Federal Court in which jurisdiction depends upon its citizenship in that state, and would be ousted by citizenship in the other states."

Louisville, etc , R. R. Co. *v.* Louisville Trust Co., 174 U. S., 552.

Moreover, if the Circuit Court of the United States for the Northern District of Georgia could have no jurisdiction on the original bill, at the suit of a citizen of Alabama against the Alabama corporation joined with the Georgia corporation, it surely could not acquire jurisdiction, merely by obtaining a decree against the Georgia corporations first, and setting up this decree in the same court as binding on the Alabama corporation, and enforcing it as an ancillary jurisdiction.

The Dissenting Opinion.

It is true that one of the judges of the Circuit Court of Appeals dissented from the majority in the case at bar.

He criticized the fact that the rights of the Alabama corporations were not asserted in the Georgia suit. If any one is to be censured for this, it should be Robinson, the trustee plaintiff in

that suit, who, with full knowledge of the fact, elected that forum and undertook to get along without them. They could not have been made parties defendant without ousting the jurisdiction of the court. It was an extraordinary proceeding for him to go into another state to foreclose a mortgage on property in his home county. The Alabama corporations were not called upon to break into the suit in Georgia as intervenors. The Georgia corporations defended their own interests as they understood them.

But even the dissenting judge indicated in his opinion that the decree of the court below would have to be reversed on other grounds. While these grounds are not stated, one of them made in the assignment of errors is so patent that it ought to be sufficient in itself to cause a denial of the certiorari.

The right of the Riverdale Cotton Mills rests only upon its claim as a purchaser, under an alleged deed from master commissioners, under a foreclosure in the Circuit Court for the Northern District of Georgia, of land situate in Alabama. There was no decree *in personam* directing the trustee or the mortgagor to convey title to the purchaser and no such conveyance is claimed. Such decree and conveyance was absolutely void.

Watkins vs. Holman, 16 Pet., 26.
Boyce vs. Grundy, 9 Pet., 275.
Northern R. Co. vs. R. R. Co., 15 How., 233.
Watts vs. Waddle, 6 Pet., 389.
Guarantee Co. v. Delta, &c., Co., 104 F. R., 5.
Carpenter vs. Strange, 141 U. S., 87-106.

"It is the deed made to the purchaser, actually transferring the title of the parties to the suit,

that terminates the mortgagor's equity of redemption."

Chicago, etc., R. R. v. Fosdick, 106 U. S., 71.

The respondents respectfully submit that there is no novel or important question involved in the case which has not already been fully settled by the decisions of the Supreme Court, and that said petition should be denied.

MARION ERWIN,
Solicitor for Respondents.

JOHN T. MORGAN,
Of Counsel.

[3067]

Since printing the above reply to the petition for Certiorari, I have on this 11th day of March, 1904, been served with a copy of another petition for Certiorari, with notice from Counsel for the Riverdale Cotton Mills, that the new petition would be substituted for the old one. This reply is equally applicable to the new petition. We do not consent to the withdrawal of the previous petition from the record, but call attention of the Court to the admission in the previous petition (Clause 6th) That there was no evidence introduced to sustain the allegations of the so-called ancillary bill, of new matters not covered by the Robinson suit.

MARION ERWIN,
Solicitor for Respondents.